Supreme Court, U.S.
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NO. _____

IN THE SUPREME COURT OF THE UNITED STATES

OCTOBER TERM, 1999

OSCAR ANDREWS,

PETITIONER

V.

UNITED STATES OF AMERICA,

RESPONDENT.

PETITION FOR WRIT OF CERTIORARI TO THE UNITED STATES COURT OF APPEALS FOR THE ELEVENTH CIRCUIT

PETITION FOR WRIT OF CERTIORARI

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29P

QUESTION PRESENTED

I. WHETHER THE STANDARD SET FORTH IN ADICKES V. H. KRESS & CO., 398 U.S. 144 (1970) APPLIES IN MOTIONS FOR SUMMARY JUDGMENT IN CIVIL FORFEITURE CASES.

THE PARTIES

This civil forfeiture case was intially styled United States v. One 1986 Mercedes, 560 SEL, VIN WDBCA39D9GA240118, et al., reflecting the five vehicles seized. Otherwise, the caption in this case contains the name of all parties.

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PETITION FOR WRIT OF CERTIORARI TO THE UNITED STATES COURT OF APPEALS FOR THE ELEVENTH CIRCUIT

REFERENCE TO OPINIONS DELIVERED BELOW

1. The unpublished opinion of the United States Court of Appeals for the Eleventh Circuit, dated February 10, 1999. (See Appendix A).

2. The Order of the trial court dated June 22, 1998, granting the Government's

motion for summary judgment. (See Appendix B).

JURISDICTION

On February 10, 1999, the United States Court of Appeals for the Eleventh Circuit affirmed the Order of the United States District Court for the Middle District of Alabama.

This Petition is filed within 90 days of said date. This Court's jurisdiction is invoked pursuant to 28 U.S.C. Section 1254(1) and Rule 13, Rules of the United States Supreme Court.

CONSTITUTIONAL PROVISIONS INVOLVED

None.

STATUTORY PROVISIONS INVOLVED

21 U.S.C. §881(a)(6), the civil forfeiture statute, and Federal Rule of Civil Procedure 56, the summary judgment rule.

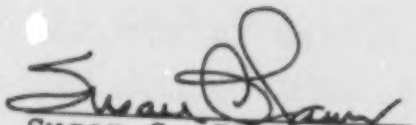
STATEMENT OF THE CASE

Petitioner, Oscar Andrews, was convicted and sentenced to life imprisonment for drug trafficking in a related criminal case. On June 27, 1994, the instant civil forfeiture complaint was filed by the Government. The Government moved for summary judgment on the civil forfeiture counts on March 13, 1996. The Government filed additional documents in support of its motion for summary judgment on April 4, 1994. Andrews filed his response on April 29, 1994. The Government renewed its motion for summary judgment on February 25, 1997.

The trial court granted the Government's motion for summary judgment on June 22, 1998.

Andrews filed a timely notice of appeal, and on February 10, 1999, the United States Court of Appeals for the Eleventh Circuit

affirmed the district court's granting of summary judgment.



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ARGUMENT

I. WHETHER THE STANDARD SET FORTH IN ADICKES V. H. KRESS & CO., 398 U.S. 144 (1970) APPLIES IN MOTIONS FOR SUMMARY JUDGMENT IN CIVIL FORFEITURE CASES.

Andrews contends that the Eleventh Circuit Court of Appeals erred in affirming the district court's granting of summary judgment to the Government, as he had presented sufficient evidence to rebut the Government's argument that it was entitled to summary judgment. By doing so, the Eleventh Circuit relied upon authorities which misconstrue the proper burden of proof in summary judgment cases.

On motion for summary judgment, the Court is to construe the evidence and factual inferences arising therefrom in the light most favorable to the nonmoving party. Adickes v.

H. Kress & Co., 398 U.S. 144, 157 (1970). Summary judgment can be entered on a claim only if it is shown that "there is no genuine issue as to any material fact and that the moving party is entitled to judgment as a matter of law." F.R.C.P. 56(c). In determining whether the movant has met his burden, the Court must review the evidence and all factual inferences therefrom in the light most favorable to the party opposing the motion. Adickes, 398 U.S. at 157.

The trial court's function at this juncture is not "to weigh the evidence and determine the truth of the matter but to determine whether there is a genuine issue for trial." Anderson v. Liberty Lobby, Inc., 477 U.S. 242, 249-50 (1986) (citations omitted). A dispute about a material fact is genuine if the evidence is such that a reasonable jury could return a verdict for the nonmoving

party. Anderson, 477 U.S. at 248; see also Barfield v. Brierton, 883 F.2d 923, 933 (11th Cir. 1989).

The party seeking summary judgment has the initial burden of informing the Court of the basis for the motion and of establishing, based on relevant portions of the pleadings, depositions, answers to interrogatories, and admissions in the file, together with any affidavits, "that there is no genuine issue of material fact and that the moving party is entitled to judgment as a matter of law. Celotex Corp. v. Catrett, 477 U.S. 317, 323, 106 S.Ct. 2548, 91 L.Ed.2d 265 (1986). Once this initial demonstration under Rule 56(c) is made, the burden of production, not persuasion, shifts to the nonmoving party. The nonmoving party must "go beyond the pleadings and by [his] own affidavits, or by the depositions, answers to interrogatories,

and admissions on file, `designate' specific facts showing that there is a genuine issue for trial." Celotex, 477 U.S. at 324.

In Andrews' response to the Government's motion for summary judgment, Andrews submitted a sworn affidavit wherein he stated that he was the registered title holder to the 1986 Mercedes Benz, 1932 Ford Coupe, 1976 Mercedes Galendawagen, and 1991 John Deere Tractor.

In the same affidavit, Andrews testified that he had legitimate sources of income. Andrews' sister Annie testified at Andrews' criminal trial that Andrews had legitimate sources of income, including a nightclub on inherited property in Alabama, and two grocery stores, a laundromat and liquor store in Miami, Florida. Annie Andrews testified that Andrews sold the laundromat for approximately $175,000 some time prior to the criminal trial, and after the nightclub burned Andrews

received approximately $200,000 in insurance money for the loss.

The district court nevertheless granted summary judgment for the Government. The Eleventh Circuit held that once the Government has demonstrated probable cause (that the property was purchased with illicit drug proceeds), "the claimant has the ultimate burden of proving by a preponderance of the evidence that the property derived from a legitimate source." Id., citing United States v. $121,100.00 in United States Currency, 999 F.2d 1503, 1505 (11th Cir. 1993). The Eleventh Circuit further held that "[w]here the government has presented evidence of an illegal source, the claimant must do more than show the existence of possible legitimate sources of cash." United States v. $41,305.00 in Currency and Traveler's Checks, 802 F.2d 1339, 1345 (11th Cir. 1986).

The fallacy of the Eleventh Circuit's argument, however, is that it has cited an appropriate burden of proof for a claimant in a trial on the merits. This burden of proof is directly contrary to the well-established burden of proof required for a party opposing summary judgment in a civil case under F.R.C.P. 56. As noted above, once the Government's initial demonstration under Rule 56(c) is made, the burden of production, not persuasion, shifts to the nonmoving party. The nonmoving party must go beyond the pleadings and by [his] own affidavits, or by the depositions, answers to interrogatories, and admissions on file, `designate' specific facts showing that there is a genuine issue for trial. Celotex, 477 U.S. at 324. However, the Court must review the evidence and all factual inferences therefrom in the light most favorable to the party opposing the

motion. Adickes, 398 U.S. at 157.

Therefore, it becomes apparent that the Eleventh Circuit's standard of forcing the nonmovant to prove by a preponderance of the evidence that the property derived from a legitimate source, United States v. $121,100.00 in United States Currency, supra, is in direct conflict with the established F.R.C.P. 56 standard, in which the trial court must view the evidence and all factual inferences therefrom in the light most favorable to the party opposing the motion. Adickes, supra.

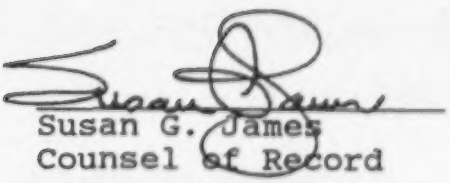
There is no genuine issue for trial where the record could not lead a rational trier of fact to find for the nonmoving party. Matsushita Electronics Industrial Corp. v. Zenith Radio Corp., 475 U.S. 574, 578, 106 S.Ct. 1348, 89 L.Ed.2d 538 (1986). Plainly, by the affidavit and criminal trial exhibits

which Andrews submitted in opposition to the Government's motion for summary judgment, Andrews met his burden of showing that a genuine issue existed for trial. When these items are viewed in the light most favorable to Andrews, Adickes, 398 U.S. at 157, any rational trier of fact would conclude that Andrews had met his burden of proving standing to contest the forfeiture of the vehicles. The Eleventh Circuit's reliance upon the higher burden of proof is in conflict with Adickes, and must be reversed.

CONCLUSION

Petitioner urges the Court to create uniformity of application of the F.R.C.P. 56 summary judgment standard of review, and explicitly hold that the Eleventh Circuit's standard of review impermissibly shifts the burden of proof to the nonmovant in civil forfeiture cases.

Respectfully submitted,



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APPENDIX A

CORRECTED

[DO NOT PUBLISH]

IN THE UNITED STATES COURT OF APPEALS

FOR THE ELEVENTH CIRCUIT

No. 98-6456
Non-Argument Calendar

D. C. DOCKET NO. CV-94-808
CV-94-870
CV-94-923
CV-94-1543
CV-95-770

UNITED STATES OF AMERICA,

Plaintiff-Appellee,

versus

ONE 1986 MERCEDES, 560 SEL, VIN

WDBCA39D9GA240118, WITH ALL
APPURTENANCE AND ATTACHMENTS THEREON,

ONE 1987 PORSCHE 928, VIN
WPOJB0921HS861111, WITH ALL
APPURTENANCES AND ATTACHMENTS THEREON,

ONE 1991 JOHN DEERE 770 TRACTOR, SERIAL
NO. M00770S005830, WITH ALL
APPURTENANCES AND ATTACHMENTS THEREON,
ONE JOHN DEERE 503 CUTTER AND ONE
MONROE DISK

ONE 1976 MERCEDES GALENDAWAGEN, 280E VIN
46023317007403, WITH ALL APPURTENANCES
AND ATTACHMENTS THEREON,
ONE 1932 FORD CUSTOMIZED COUPE, VIN
5081056,

Defendants-Appellants,

OSCAR ANDREWS,
WILLIE STOVALL,

Claimants.

Appeal from the United States District Court
for the Middle District of Alabama

(February 10, 1999)
Before ANDERSON, CARNES and HULL, Circuit Judges.

PER CURIAM:

Claimant Oscar Andrews appeals the magistrate's judge's grant of summary judgment to the government in this in rem forfeiture action.[1] The judge concluded that Andrews had not established standing with respect to all of the property except the 1986 Mercedes. The judge also granted summary judgment against the 1986 Mercedes, however, because Andrews had not rebutted the government's showing of probable cause.

In its initial motion for summary judgment, the government presented substantial evidence that Andrews was in fact the owner of all of the vehicles. In his response and on appeal, Andrews disavows any claim in the 1987 Porsche, so summary judgment for lack of standing is clearly appropriate with respect to this vehicle. He did

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Pursuant to 28 U.S.C. §636(c), the parties voluntarily consented to have all proceedings handled by a magistrate judge.

allege ownership of all the other vehicles, however.

Even assuming, contrary to the magistrate's judge's conclusion, that the government's assertion, coupled with Andrews verified claim, established standing to contest the forfeiture of the vehicles, we nonetheless hold that summary judgment is appropriate in this case. Once the claimant has established standing and the government has demonstrated probable cause, "the claimant has the ultimate burden of proving by a preponderance of the evidence that the property derived from a legitimate source." United States v. $121,100.00 in United States Currency, 999 F.2d 1503, 1505 (11th Cir. 1993) (citations omitted). Thus, if the claimant "fails to introduce significant, credible evidence sufficient to show that a reasonable jury could find, by a preponderance of the evidence, that the claimant is entitled to the property, the government is entitled to summary judgment." United States v. Four Parcels of Real Property in Greene and Tuscaloosa Counties in the State of Alabama, 941 F.2d 1428, 1439 (11th Cir. 1991) (en banc).

Andrews has not produced such evidence in this case. He has filed copies of the testimony of two individuals from his criminal trial, at the conclusion of which he was found guilty of various drug-related offenses and sentenced to a term of life imprisonment. Both witnesses offered alternative sources of income from which Andrews asserts his purchases of these vehicles could have been financed. The government, however, has presented evidence that strongly suggests that these vehicles were purchased with funds obtained though illegal activity, e.g., tax returns that indicate these vehicles were well-beyond the legitimate means of Andrews. Perhaps most probative is the fact that, by acknowledging ownership, Andrews of necessity admits that he purchased the vehicles in the names of others. The nominal purchaser in such instances is commonly referred to as a "straw man", and we have noted in the past that such a purchase arrangement is "common among those who earn money by selling illegal drugs." Four Parcels, 941 F.2d at 1441; see also, id. at 1442 ("We judge probable cause with common sense and an awareness of the many

methods drug dealers use to conceal their assets.") In light of the government's substantial showing, Andrews' mere suggestion of an alternative source is not sufficient to produce a genuine issue of material fact. As we have stated before, "Where the government has presented evidence of an illegal source, the claimant must do more than show the existence of possible legitimate sources of cash." United States v. $41,305.00 in Currency and Traveler's Checks, 802 F.2d 1339, 1345 (11th Cir. 1986). Furthermore, when the claimant "has presented only the possibility of an innocent source .... such a possibility cannot vitiate the government's showing of a strong probability that the source of the money is in fact illegal activity." Id. (citation omitted).

Accordingly, the order of the magistrate judge is AFFIRMED.[2]

---

[2] Appellant's request for oral argument is denied.

APPENDIX B

IN THE DISTRICT COURT OF THE UNITED STATES FOR THE MIDDLE DISTRICT OF ALABAMA NORTHERN DIVISION

UNITED STATES OF AMERICA,	)	
	)	
Plaintiff	)	
	)	CIVIL ACTION NO. 94-S-
	)	808-N
V.	)	
	)	
ONE 1986 MERCEDES, 560 SEL, VIN WDBCA39D9GA240118 WITH ALL APPURTENANCE AND ATTACHMENTS THEREON,	)	
	)	
Defendant.	)	

UNITED STATES OF AMERICA,	)	
	)	
Plaintiff	)	
	)	CIVIL ACTION NO. 94-S-
	)	870-N
	)	
i.	)	
	)	
ONE 1987 PORSCHE 928, VIN WPOJB0921HS861111, WITH ALL APPURTENANCE AND ATTACHMENTS THEREON,	)	
	)	
Defendant.	)	

UNITED STATES OF AMERICA,	)	
	)	
Plaintiff	)	
	)	
v.	)	CIVIL ACTION NO. 94-S-
	)	923-N
	)	
ONE 1932 FORD CUSTOMIZED COUPE, VIN 5081056, WITH ALL APPURTENANCE AND ATTACHMENTS THEREON,	)	
	)	
Defendant.	)	

ONE 1976 MERCEDES GALENDAWAGEN, 280E VIN 46023317007403, WITH ALL APPURTENANCES AND ATTACHMENTS THEREON,	)	
	)	CIVIL ACTION NO. 94-S-
	)	1543-N
Defendant.	)	

UNITED STATES OF AMERICA	)	
	)	
Plaintiff,	)	
	)	CIVIL ACTION NO. 94-S-
	)	770-N
v.	)	
	)	
ONE 1991 JOHN DEERE 770	)	

TRACTOR, SERIAL)
NO. M00770S005830, WITH ALL)
APPURTENANCES AND)
ATTACHMENTS THEREON, ONE)
JOHN DEERE 503 CUTTER AND)
MONROE DISK,)
)
Defendants.)

OPINION AND ORDER

These consolidated cases are before the court on the motion for summary judgment filed by the United States. The court has reviewed the pleadings, the motions and the responses to the motions. The court finds that claimant Oscar Andrews lacks understanding to contest forfeiture of the defendant vehicles except to the 1986 Mercedes. In the absence of standing, Andrew cannot contest the forfeitures.

With respect to the Mercedes, the court concludes that the United States has established probable cause and that Andrews has not rebutted that showing. Andrews has presented no defense to

the forfeiture. The vehicles should be forfeited to the United States. Accordingly, it is

ORDERED AND ADJUDGED that the United States' motion for summary judgment be and is hereby GRANTED and that the defendant 1986 Mercedes, the 1987 Porsche, the 1932 Ford Coupe, the 1976 Mercedes Galendawagen and the 1991 John Deere tractor together with the implements related to the tractor be and are hereby forfeited to the United States for disposition in accordance with the law. It is further

ORDERED that each party shall bear its own costs.

Done this 22nd day of June, 1998.

/S/
CHARLES S. COODY
UNITED STATES MAGISTRATE JUDGE